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## OFFICE OF PETITIONS

In re Application of  
Christian Miculka et al  
Application No. 10/644,592  
Filed: August 19, 2003  
Attorney Docket No. 612,406-035

DECISION ON PETITION  
UNDER 37 CFR 1.55(c)

This is a decision on the petition under 37 CFR 1.55(c), filed February 27, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for the benefit of priority to foreign German Application No.19741715.9, filed September 22, 1997.

The petition is **GRANTED**.

This pending nonprovisional application was filed after November 29, 2000, and did not include a reference to the foreign application, for which benefit is now sought, within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application. Since the claim for priority is submitted after the period specified in 37 CFR 1.55(a)(1)(i), this is an appropriate petition under the provisions of 37 CFR 1.55(c).

A petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority requires:

- (1) The nonprovisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;
- (2) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date and be included either in an oath or declaration (37 CFR 1.63(c)(2)) or in an Application Data Sheet (37 CFR 1.76(b)(6));
- (3) the surcharge as set forth in 37 CFR 1.17(t);

- (4) a statement that the entire delay between the date the claim was due under 37 CFR 1.55(a)(1) and the date the claim was filed was unintentional (the Director may require additional information where there is a question whether the delay was unintentional); and
- (5) the above-identified nonprovisional application must be filed within 12 months of the filing date of the foreign application.

This application was filed on August 19, 2003, which is after November 29, 2000. Intermediate International Application PCT/EP98/05997, was filed September 21, 1998 and within 12 months of (the filing date of the foreign application to which benefit is now being claimed). On June 14, 2004, an executed oath/declaration was received which identifies the foreign application for which priority is claimed by application number, country and filing date. The required petition fee of \$1,330 was received with the petition. Lastly, petitioner has provided an adequate statement of unintentional delay.

All of the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 119(a)-(d) is accepted as being unintentionally delayed.

**The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.55(c) should not be construed as meaning that this application is entitled to the benefit of the prior-filed application. In order for this application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 119(a)-(d) and 37 CFR 1.55(a)(1) must be met.**  
**Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether this application is entitled to the benefit of the earlier filing date.**

This application is being referred to Technology Center AU 1623.

**A review of the Office record shows that the application is abandoned for failure to timely respond to the Non-Final Rejection mailed February 16, 2006.**

Any inquiries directly pertaining to this matter may be directed to the undersigned at (571) 272-3208.

*Karen Creasy*

Karen Creasy  
Petitions Examiner  
Office of Petitions

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